IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 7 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF SALES TAX

Versus

VADILAL DAIRY FROZEN FOOD INDUSTRIES

Appearance:

1. SALES TAX REFERENCE No. 7 of 1994

MR UDAY R. BHATT, AGP, for Petitioner

MR TANVISH U BHATT for Respondent

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 17/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Gujarat Sales Tax Tribunal has referred the following common question of law under Section 69 of the Gujarat Sales Tax Act, 1969 (the Act) at the instance of the applicant - State of Gujarat :

"Whether on the facts and in the circumstances of the case, the Gujarat Sales Tax Tribunal was justified in law in allowing set off under Rule 42 of the Gujarat Sales Tax Rules, 1970, on the purchase of dry-ice made by the opponent?"

2. The respondent - assessee, who is carrying on business of manufacturing ice-cream, claimed set-off under Rule 42 of the Gujarat Sales Tax Rules, 1970 (the Rules) in respect of the tax paid on dry-ice contending that the same was an item of consumable stores. The Sales Tax Officer, while assessing the respondent assessee for Samvat Years 2034, 2035, 2036 and 2037, disallowed the set-off, holding that dry-ice was employed to facilitate transportation of manufactured goods and did not form an item of consumable stores. The assessee failed in the first appeal before the Assistant Commissioner. The matter was carried in second appeal before the Tribunal. The Tribunal, relying upon an unreported decision of this Court rendered in case of M/s SLM Maneklal Industries Ltd. v. State of Gujarat, Sales Tax Reference No.8 of 1978, upheld the contention of the assessee, holding that the activity of manufacture must include everything done upto the stage of making the manufactured product available for sale as manufactured i.e. as ice-cream at the selling centres.

3. Heard Mr.Uday R. Bhatt, the learned Assistant Government Pleader for the applicant - revenue and Mr.Tanvish U. Bhatt, the learned advocate for the respondent - assessee.

4. Rule 42 of the Rules, as is material for the present, reads as under :

"42. In assessing the tax payable by a manufacturer (hereinafter referred to as the "assessee"), the Commissioner shall, subject to the general conditions of rule 47, and further conditions specified below, grant him a draw back, set-off or as the case may be refund, of the whole or any part of the tax in respect of the purchase of goods used by him in manufacture :-

(1) xxxxx

(2) xxxxx

(3) the said goods have been used by the assessee within the State, as raw or processing materials or as consumable stores in the manufacture of taxable goods as defined in clause (33) of Section 2 of the Act.

(4) xxxxx "

Therefore, in case of a registered dealer, one of the conditions that is required to be satisfied for purposes of claiming set-off and being granted set-off is that the goods manufactured by an assessee utilise other goods, on which tax has been paid, as raw materials or processing materials or as consumable stores in the manufacture of taxable goods.

4.1 The same phrase came up for consideration before this Court in the case of Vasuki Carborundum Works v. The State of Gujarat, (1979) 43 STC 294. The assessee therein, involved in manufacturing crockery, purchased kathi (twine), which was used for the purpose of packing the manufactured goods. The stand of the revenue was that kathi was neither raw material, nor processing material, nor consumable stores, required for the manufacture of crockery. This Court, applying the Apex Court decision in case of J.K.Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, [1965] 16 STC 563, held that:

"..... that a process or an activity may not be necessary theoretically for production of finished goods, but if it is such an integral part of the ultimate manufacture of goods that in its absence the manufacture may not be commercially expedient, that activity or process must be considered to be manufacturing activity itself and the goods intended for use in that process or activity should be considered to be goods required in the manufacture of taxable goods for sale. It is no doubt true that the articles which can be purchased tax-free on furnishing a prescribed certificate by a manufacturer must be either raw materials or processing materials or consumable stores. But it is not possible to say much less urge successfully that the consumable stores must

unnecessarily partake the nature of raw materials or processing materials or must more or less stand on the same footing. We do not think that the learned Assistant Government Pleader was right in his contention that consumable stores must be given a very restricted meaning since they are used along with the words "raw or processing materials" in section 13(1)(B). In the ultimate analysis, the relevant question is : are the articles in question the prescribed articles required in the manufacture of taxable goods for sale? In other words, are they consumable stores or materials required in a process or activity which is integrally connected with the manufacturing activity and without which the activity of manufacture may be commercially inexpedient? The answer, in our opinion, is that the article in question in this reference, namely, kathi (twine), is part of such consumable stores which would be necessarily required in the activity of marketing the goods which is essentially connected with the larger activity of manufacture. We do not want to say that all the articles or materials which may facilitate the business of manufacture would be such consumable goods as entitled to be purchased tax-free. The ornamental packing of an article for tying carton or boxes in which the manufactured goods are packed so as to make them attractive in the market cannot ex facie claim such exemption provided in section 13(1)(B) since they are also the articles which may be making the goods more attractive and thereby facilitating the manufacture in his business of marketing. It is not possible in the very nature of things to lay down exhaustively or to suggest a straight jacket formula as to what would be the articles or goods required in a process or activity which though not strictly a manufacturing activity itself but is such an integral part thereof that in its absence the manufacturing activity may not be commercially expedient. It would depend on the facts and circumstances of each case but having regard to the nature of articles with which we are concerned in the present case, we must hold that having regard to its nature, namely, it is a part of consumable stores which must necessarily be used for the purpose of marketing the articles in question, the assessee was entitled to purchase the same on the prescribed certificate under Section 13(1)(B) ..... "

5. Applying the aforesaid test to the facts found by the Tribunal, it is apparent that the assessee manufactures ice-cream; the said product, by its very nature, has to be kept in containers and preserved at certain temperature so as to ensure that ice-cream retains its characteristic as ice-cream and does not loose the form in which it is manufactured. Dry-ice, which is utilized by the assessee for preserving ice-cream during transportation from the manufacturing center to the selling center, would, in the circumstances, be a consumable store on application of the principles of commercial expediency. Thus, there is no infirmity in the order of the Tribunal calling for any interference.

6. The question referred to the Court is answered accordingly. The Tribunal was justified in law in allowing the set-off under Rule 42 of the Rules on purchase of dry-ice by the assessee. The reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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